

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 2006-10210
c/w 2005-11709

SECTION: B

ELMIRA PRESTON, ET AL

V.

TENET HEALTHSYSTEM MEMORIAL MEDICAL CENTER, INC. D/B/A
MEMORIAL MEDICAL CENTER

FILED: _____

DEPUTY CLERK

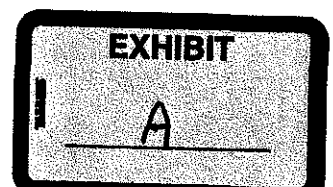
SETTLEMENT AGREEMENT

This Settlement Agreement sets forth the terms of the class action settlement between Tenet Healthcare Corporation ("THC"), Tenet HealthSystem Memorial Medical Center, Inc., (Memorial), and the Class (all as defined herein):

I. Definitions:

For the purposes of this Agreement and all exhibits hereto:

- a. "Agreement" or "Settlement Agreement" or "Settlement" shall mean this Settlement Agreement, and the settlement described herein, or any modification thereof by the written consent of THC, Tenet HealthSystem Memorial Medical Center, Inc. and the Class.
- b. "Appellate Court(s)" shall mean the Louisiana Fourth Circuit Court of Appeal and the Louisiana Supreme Court.
- c. "Claim" or "Claims" shall mean any and all past, present or future claims, demands, suits, actions, rights of action, liabilities, interventions, subrogations, liens, rights,



obligations and causes of action, at law, equity, or otherwise for compensatory damages or other relief, whether known or unknown, filed or unfiled, asserted or as yet unasserted, arising out of the Incident, including all claims contained in the petitions filed in Civil District Court entitled *Leon Preston et al vs. Tenet HealthSystems Memorial Medical Center Inc. et al*, Civil District Court docket number 2006-10210 c/w 2005-11709 and all supplemental and amended petitions thereto, and *Darlene Husband et al vs. Tenet HealthSystem Memorial Medical Center Inc. et al*, Civil District Court docket number 2005-11709 c/w 2006-10210 and all supplemental and amended petitions thereto.

d. As certified by the Court, "Class" shall mean:

All patients of Memorial Medical Center, and visitors on the premises, who sustained injuries including death or personal injury as a result of the insufficient design, inspection and/or maintenance of Memorial's backup electrical system, failure of Memorial and/or Tenet HealthSystem (THC) to implement their evacuation plans and/or emergency preparedness plans, and/or the failure of Memorial and/or THC to have a plan which would have facilitated the safe transfer of patients and visitors out of harm's way, and the failure of Memorial and/or THC to have a plan of care for patients and visitors in the event of a power outage in the wake of Hurricane Katrina within the property owned by Memorial on or about the time period of August 26th through and including August 29th and thereafter; and

All persons who sustained personal injury as a result of the deaths or personal injuries to patients of Memorial and visitors on the premises as a result of the insufficient design, inspection and/or maintenance of Memorial's backup electrical system, the failure of Memorial and/or THC to implement their evacuation plans and/or emergency preparedness plans, and/or the failure of Memorial to have a plan which would have facilitated the safe transfer of patients and visitors out of harm's way, and the failure of Memorial and/or THC to have a plan of care for patients and visitors in the event of a power outage in the wake of Hurricane Katrina within the property owned by Memorial on or about the time period of August 26th through and including August 29, 2005 and thereafter; and

All persons at or in the Memorial Medical Center facility who were not Memorial employees, who sustained injury and/or damage including but not limited to, personal injury or wrongful death, as a result of: unreasonably dangerous conditions and/or

defects in and/or on the premises of Memorial Medical Center, insufficient design, inspection and/or maintenance of Memorial's backup electrical system, the failure of Memorial and/or Tenet HealthSystem (THC) to implement their evacuation plans and/or emergency preparedness plans, and/or the failure of Memorial and/or THC to have a plan which would have facilitated the safe transfer of patients, visitors and invitees out of harm's way, and the failure of Memorial and/or THC to have a plan of care for patients, visitors and invitees in the event of a prolonged power outage in the wake of Hurricane Katrina within the property owned by Memorial on or about the time period of August 26, 2005 through and including August 29, 2005 and thereafter; and

All persons who sustained injury as a result of the death or personal injury to any person at or in the Memorial Medical Center facility (who was not a Memorial employee) who [sic] sustained injury and/or damage, including but not limited to personal injury or wrongful death, as a result of: unreasonably dangerous conditions and/or defects in an/or [sic] on the premises of Memorial Medical Center, insufficient design, inspection and/or maintenance of Memorial's backup electrical system, the failure of Memorial and/or THC to implement their evacuation plans and/or emergency preparedness plans, and/or the failure of Memorial and/or THC to have a plan which would have facilitated the safe transfer of patients, visitors and invitees out of harm's way, and the failure of Memorial and/or THC to have a plan of care for patients, visitors and invitees in the event of a prolonged power outage in the wake of Hurricane Katrina within the property owned by Memorial on or about the time period of August 26, 2005 through and including August 29, 2005 and thereafter.

The Class is as defined above exclusive of those potential Class members who chose to opt out by the deadline previously established by the Court. The Parties agree that no other members of the Class can now opt out. The Class certified in the Litigation and the Class settling with the Compromising Defendants is one and the same and co-extensive, for purposes of the release of claims. The Court has broad and equitable authority and discretion with respect to individual allocation and distribution of settlement benefits in order to resolve all claims.

- e. "Class Counsel" shall mean the group of persons appointed by the Court to represent the Class for the Litigation, currently:

Joseph M. Bruno (Bar #3604)

Roderick Alvendia (Bar #25554)

Mark P. Glago (Bar #25395)

Anthony D. Irpino (Bar #24727)

Todd R. Slack (Bar #24647)

James M. Williams (Bar #26141)

Tammie Holley (Bar #26659)

- f. "Class Members(s)" or "Member(s) of the Class" shall mean singularly or collectively (as their interests may appear) Persons who as of the date of the Preliminary Approval Order is issued, meet the criteria set forth in paragraph I(d).
- g. "Class Representatives" shall mean those Persons previously so designated by the Court;
- h. "Class Settlement Notice" or "Notice" shall mean the legal notice of the terms of this Agreement published in accordance with the order(s) of the Court, the Louisiana Code of Civil Procedure, the applicable law, and the terms of this Agreement.
- i. "Compromising Defendants" shall mean and refer to Tenet Healthcare Corporation (THC), Tenet HealthSystem Memorial Medical Center, Inc. (Memorial), as well as their respective past and present parent companies, subsidiaries, inter-related companies, agents, assigns, successors, representatives, employees, servants, officers, directors, members, shareholders, and insurers.
- j. "Court" shall mean Civil District Court in and for the Parish of Orleans, State of Louisiana.
- k. "Court Appointed Distribution Agent" (CADA) shall mean an accountant, accounting firm, attorney or such other Person or Persons qualified to address tax, banking, or

settlement fund distribution matters, who shall be selected and appointed by the Court.

- l. "Special Master" shall mean that individual who, by virtue of qualifications and experience, is appointed by the Court to carry out the duties of managing the claims process and distributing Settlement Funds as outlined below.
- m. "Fairness Hearing" shall mean the hearing to be conducted by the Court, upon notice to the Class, and other interested Persons, pursuant to Louisiana Code of Civil Procedure article 594, to determine the fairness, adequacy and reasonableness of this Settlement in accordance with the law.
- n. "Final Settlement Date" shall mean the date on which all the following have occurred: a) execution of this Agreement by the Parties; b) entry of the final Order and Judgment approving this settlement as contemplated by this Agreement; c) finality of the Order and Judgment by virtue of the Order and Judgment having become final and non-appealable due to: 1) no objection(s) being properly raised to the Order and Judgment; 2) the expiration of all allowable appeal periods without a motion for an order for an appeal having been filed; 3) final affirmance of the Order and Judgment on appeal or final dismissal or denial of such appeals, including the exhaustion of further opportunity for appellate review by appeal; or 4) the dismissal with prejudice of the Claims of the Class against the Compromising Defendants. The Parties agree to employ their best efforts to reach the Final Settlement Date in accordance with the terms and provisions of this agreement.
- o. "Incident" shall mean and include those injuries and damages that have been asserted or could have been asserted in the Litigation as being caused by the Compromising

Defendants as a result of alleged (a) defects in Memorial's premises including but not limited to the design, inspection, and/or maintenance of Memorial's backup electrical system; (b) actions or inactions of Memorial and/or THC with regard to implementing an evacuation and/or emergency preparedness plan for emergencies including hurricanes and flooding; (c) actions or inactions of Memorial and THC regarding planning and implementation of any plans for the transfer of patients and visitors; (d) actions or inactions of Memorial and/or THC which could give rise to premises liability claims; and (e) actions or inactions of Memorial and THC with regard to any and all plans and implementation of said plans including but not limited to those plans designed to house, feed, protect, and care for patients and visitors and to effect the safe transfer and/or evacuation of patients and visitors from the property owned by Memorial for the time period August 26, 2005 through and including September 2, 2005.

- p. "Litigation" shall mean that class action captioned *Elmira Preston, et al vs. Tenet HealthSystem Memorial Medical Center, Inc.*, Civil District Court, for the Parish of Orleans, State of Louisiana No.: 2006-10210, c/w 2005-11709, including all consolidated cases and cases encompassed in the class definition or otherwise made part of the class action as provided in the court's Order certifying the class, and any subsequent orders and/or rulings of the Appellate Courts regarding class certification.
- q. "Order and Judgment" shall mean the order to be entered by the court: 1) approving this Agreement as fair, adequate and reasonable and in the best interest of the Class as a whole in accordance with the Louisiana Code of Civil Procedure; 2) dismissing with prejudice all claims of the Class in the Litigation against the Compromising

- Defendants; 3) ordering that upon the Final Settlement Date, liability of any type of the Compromising Defendants to the Class in the Litigation is fully satisfied; 4) releasing all "Released Claims" by the Class and/or Class Members against the Compromising Defendants; 5) effectuating the bar order requested and described herein; and 6) making such other orders, findings and determinations necessary and appropriate to effectuate the terms and intent of this Agreement. (The Parties reserve the right to submit a proposed Preliminary Approval Order).
- r. "Party and/or Parties" shall mean the Class and each or all Class Counsel and the Compromising Defendants.
- s. "Person" or "Persons" shall mean any natural person, individual, juridical person, government entity, or legal entity, including, without limitation: Parties, corporations, partnerships, limited liability companies, attorneys, insurers, associations, healthcare providers, as well as city, parish, state and federal entities, and any of their successors, predecessors or assigns.
- t. "Preliminary Approval Order" shall mean the order to be entered by the Court, preliminarily approving this Agreement. Subsequent orders of the Court shall set the date of the Fairness Hearing, approve the Notice, and also approve and establish procedures for objecting to the Settlement, and/or address issues regarding the Class Settlement Notice, and such other procedures, guidelines, directives and dates that the Court may deem warranted, except that, as set forth above, no further opt outs will be permitted. The Preliminary Approval Order shall be immediately effective (notwithstanding writ or appellate practice) and, immediately upon entry, shall trigger deadlines set forth herein or as otherwise ordered by the Court, which are dependent

upon the date of entry of the Preliminary Approval Order. The dates and deadlines set forth in the court orders described herein shall be subject to alteration by order of the Court, including that the Fairness Hearing may be adjourned, continued or rescheduled with no additional notice other than that posted or given at the time and place at which the Fairness Hearing was scheduled to occur if it is continued or rescheduled. (The Parties reserve the right to submit a proposed Preliminary Approval Order).

- u. "Released Claim" or "Released Claims" shall mean any and all claims by the Class or any Class Members in the Litigation whatsoever against the Compromising Defendants relating to the Incident, including any and all Claims that the Class and/or Members of the Class may have, regardless of whether such Claim is known or unknown filed or unfiled, asserted or as yet unasserted, or existing or contingent, and regardless of the legal theory or theories which arise out of or are in any manner related to, or connected with, the Incident. "Released Claims" shall also include any claims which have been asserted or may be asserted in the Litigation by related persons under Louisiana Civil Code articles 2315, 2315.1, 2315.2, former article 2315.3, 2315.6, 2317, 2317.1, 2320, 2322, 2324, 2682, 2684, 2691, 2696, 2697 and/or 2698, and/or any and all claims which have been or may be asserted under lease, statute, regulation, ordinance and/or guideline, arising out of any injury to any Class Member due to the Incident.
- v. "Released Party" shall mean the Compromising Defendants as defined hereinabove.
- w. "Settlement Administrative Costs" shall mean all costs, expenses and fees reasonably incurred in 1) preparing and disseminating any notices to the Class; 2) funding the

day-to-day operations and functions of the Special Master; 3) compensating the Special Master and his agents, contractors, and employees, including the CADA, for services pertaining to the Settlement, including but not limited to, reviewing and analyzing the claims of Class Members, providing information to Class Members in connection with the preparation of documentation of Claims, determining amounts of claim payments to be made to Class Members and distributing Settlement Fund Payments to Class Members; 4) creating and maintaining any administrative accounts with amounts necessary to provide sufficient funding to effectuate the Settlement; and 5) payment of fees and costs of the escrow agent associated with the Settlement, and any and all other related banking fees.

- x. "Settlement Benefits" shall mean the consideration for this Agreement, comprised of: the Settlement Payment (as defined below).
- y. "Settlement Payment" shall mean the sum of Twenty Five Million and 00/100 (\$25,000,000) payable in two parts, the first payment of Twelve Million Five Hundred Thousand (\$12,500,000) to be paid into an interest bearing escrow account on or before July 8, 2011, and the remaining Twelve Million Five Hundred Thousand (\$12,500,000) to be paid on or before January 13, 2012 with 1.5% interest per annum on the second payment, said interest starting on July 8, 2011 until paid.

II. RECITALS AND REASONS FOR SETTLEMENT

The essential elements of this Settlement Agreement are to: 1) provide the Members of the Class with the Settlement Benefits; 2) upon receipt of which, the Class agrees to dismiss all claims against the Compromising Defendants in the *Elmira Preston, et al vs. Tenet HealthSystem Memorial Medical Center, Inc.*, Civil District Court, for the

Parish of Orleans, State of Louisiana No.: 2005-11709, consolidated with *Darlene Husband et al vs. Tenet Healthcare Corporation et al 2006-10210* class action litigation and all Released Claims as defined herein; and 3) to bring finality and resolution to any and all claims for injuries and damages arising out of the Incident.

Whereas, the Compromising Defendants and the Class have entered into this Agreement in order to put to rest all controversy by and between them in any way related to the Incident and/or Litigation and to avoid further expense and burdensome, protracted and costly litigation that would be required in defending and prosecuting the Litigation;

Whereas, the Parties are entering into this Agreement in recognition of 1) the risks inherent in litigation; 2) the likelihood that future proceedings will be protracted and expensive if the proceeding is not settled by voluntary agreement; 3) the magnitude of the benefits derived from the contemplated settlement in light of both the upside potential and the downside risk associated with further litigation, and the expense thereof and the exposure associated therewith; and 4) the determination by the Parties that the Settlement is fair, reasonable, adequate and in their best interests under the circumstances;

Whereas, the Class Counsel and the Class Representatives have evaluated the Claims asserted against the Compromising Defendants related to the Incident from a settlement versus further litigation perspective and have determined that a settlement is in the best interests of the Class;

Whereas, the Compromising Defendants enter into this Agreement to obtain a complete release for all Released Claims against them;

Whereas, substantial time and effort has been expended by the Parties and their Counsel in arm's length negotiation of this Agreement and the Settlement contemplated hereby;

Whereas, this Agreement incorporates all previous negotiations and agreements, and is the result of arm's length negotiations, and the Class Representatives and their respective Counsel consider this Settlement to be fair, reasonable, adequate, and in the best interest of the Class;

Whereas, the Compromising Defendants deny and continue to deny each and every one of the Class Representatives allegations in the Litigation described hereinabove, but desire on their part to avoid the expense, inconvenience, and distraction of further litigating this Class Action, and all Parties agree and acknowledge that this Settlement is not to be construed in any manner, shape or form as an admission of liability on the part of the Compromising Defendants;

Now Therefore, the Parties do hereby, subject to the final approval of this Settlement by the Court, and the other contingencies provided herein, settle and compromise all "Released Claims" of the Class Representatives and the Class, such that all such claims shall be dismissed with prejudice, as follows:

III. TERMS OF SETTLEMENT

A. Settlement Consideration, Settlement Payment, and Schedule:

1. The "Consideration" for this Settlement shall be the Settlement Payment and Settlement Benefits as defined hereinabove.

2. The Parties agree this is a Final Settlement.
3. On or before July 11, 2011, the Parties shall take steps necessary or appropriate to obtain Preliminary Approval of the Settlement Agreement. The Class through Class Counsel and Defendants through its counsel will jointly request that the Civil District Court for the Parish of Orleans enter orders granting Preliminary Approval and setting forth the notice program required for accomplishment of the Settlement.
4. Compromising Defendants shall aid, assist, and provide their best efforts in implementing this Agreement, and gaining Court approval for the Settlement.
5. The Class, Class Counsel, Compromising Defendants and their counsel, will use their best efforts to conduct a Fairness Hearing properly, timely, with dispatch, and in accordance with the orders of the Court.
6. This Agreement is terminated if any one of the following occurs: a) the Court or an Appellate Court renders a final and non-appealable order refusing to enter the Order and Judgment in accordance with the terms and conditions of this Agreement or such other terms as might be mutually acceptable to the Parties; or b) the Order and Judgment is reversed upon appeal or writ and no further appeals or writs (or relief from the Court or Appellate Courts) are available.
7. In the event this Agreement is terminated for any of the reasons set forth in paragraph 7 above, the Agreement shall be void *ab initio* and without prejudice to the Parties. The Parties shall return to the status *quo ante* and the Settlement Payment *shall revert back to the Compromising Defendants*

8. In the event the previously issued class certification, notice to the Class or definition of the Class are found to be defective, deficient, or otherwise altered by the Court or Appellate Court, the Parties agree to seek curative orders, including a certification order and/or to take procedural steps to cure any perceived or later recognized deficiencies, and to implement this Settlement Agreement.
9. As part of the consideration for Compromising Defendants entering into this Settlement, Class Counsel agree not to represent any party that has opted out or objector to the Settlement Agreement and further agree not to cooperate with, or share any work product or strategies, with any counsel outside of Class Counsel.

B. Complete Resolution of All Claims

1. Dismissal with Prejudice of Claims

Upon reaching the Final Settlement Date, the Class Counsel on behalf of the Class agree that the claims of the Class against the Compromising Defendants shall be dismissed with prejudice.

2. Release by Class Members

- a. By virtue of this Settlement and the Order and Judgment, each Class Member will be deemed to have fully, finally and completely released the Compromising Defendants for any and all Released Claims, and will be forever barred from asserting such Released Claims in the future.

b. The Release provided for herein can and will be raised as a complete defense to and will preclude any Released Claim against the Compromising Defendants.

3. Notice of the Settlement and Plan for Dissemination of Notice:

Simultaneously with the filing of the Joint Motion for Preliminary Approval as set forth hereinabove, Class Representatives will submit to the Court a Proposed Notice to Class Members and a Plan for Dissemination of Notice to Class Members. Said Notice shall be in clear, concise, easily understood language, describing the Settlement Agreement, setting forth the Fairness Hearing date and outlining the legal rights and options of Class Members, including the right to object to the Settlement Agreement, and shall be in accordance with Louisiana Code of Civil Procedure and due process. Said notice shall not include a deadline or procedure for Class members to opt out of the class since the deadline for opting out previously set by the Court has passed. The Class is as defined above exclusive of those potential Class members who chose to opt out by the deadline previously established by the Court. The Parties agree that no other members of the Class can now opt out. Compromising Defendants reserve the right to object to and/or to brief the Court regarding any aspect of the Proposed Notice Plan and to request that the Court approve a modified Notice Plan..

C. Medicare Secondary Payer Act Claims Reporting

**1. This Agreement is made in compliance with the Medicare
Secondary Payer Act**

Class Counsel and Compromising Defendants are all aware of the reporting obligations contained in the Medicare Secondary Payer Statute ("MSP"), 42 U.S.C. § 1395 and 42 C.F.R. Part 411.25. The Parties recognize and agree that as to some class members/claimants, Medicare's interests may need to be considered and protected. Accordingly, this Settlement Agreement is also intended to comply with the MSP to protect Medicare's interest. The Parties further agree that the claims process will necessarily have to address individual class members'/claimants' potential entitlement to Social Security disability benefits under 42 U.S.C. § 423 and the entitlement of CMS to subrogation and intervention to recover any Medicare overpayments under the MSP, 42 U.S.C. § 1395y(b)(2). This settlement agreement does not propose to shift to Medicare or Medicaid the responsibility to pay medical expenses for the treatment of injury-related conditions. Instead, this settlement agreement is intended to provide the Class with a lump sum to foreclose Compromising Defendants' responsibility for future payments of all injury-related medical expenses, along with any and all claims, as defined in Paragraph I(c).

2. All parties have considered Medicare's interests in the preparation of this Settlement Agreement

In reaching this Agreement, the Parties have considered that many common medical expenses are not payable or reimbursable under the Federal Medicare Program. Without admitting liability of any kind, Compromising Defendants have considered and specifically included compensation for these non-Medicare covered expenses in the Settlement Payment. Class Counsel acknowledge that the Social Security Administration, the United States Government and the federal courts have exclusive jurisdiction over any decision regarding an individual class member's entitlement to Social Security, Medicare, or Medicaid benefits including the amount and duration of payments and offset reimbursement for prior payments. Class Counsel further recognize that the applicable Federal Law and Regulations will apply to any such decision.

3. Recognition of Medicare's Right of Recovery

Class Counsel further acknowledge and recognize that CMS has the right to recover from the settlement funds of any individual class member/claimant (up to the entire settlement amount available to that class member/claimant) any conditional payments that were not resolved at the time of this settlement, as well as any set-aside accounts CMS deems necessary. In order to protect Class Counsel, Compromising Defendants, and the interests of CMS

pursuant to the MSP, the Parties agree to provide any and all information to the Special Master as may be necessary to allow him/her to perform all necessary Conditional Payment research. Class Counsel expressly understand and acknowledge that this settlement and any disbursement of funds is strictly contingent upon completion of Conditional Payment research as to each individual class member/claimant who is Medicare eligible and the receipt of a Final Demand from the Medicare Secondary Payer Recovery Contractor (MSPRC). Class Counsel and Compromising Defendants recognize the obligation under 42 USC § 1395y(b)(2) to satisfy any conditional payments that Medicare made for medical care related to the injury/accident herein and to protect Medicare's interest in the future. Accordingly, Class Counsel and Compromising Defendants and their Counsel agree to fully cooperate with the Special Master to accomplish this Medicare Conditional Payment research. Class Counsel further agrees to sign all documents necessary to achieve this goal and/or to require any individual class member/claimant to execute all such documents if needed. Before the release of any funds to the Class Members, the Special Master shall pay MSPRC's Final Demand as to each individual class member/claimant from that class member's/claimant's share of the settlement funds. Once that is done, the class member/claimant thereafter shall be solely

responsible for any additional conditional payments that may arise and/or that the MSPRC may demand. Further, Class Counsel and class members/claimants acknowledge and understand that CMS has the right to recover from the settlement funds (up to the entire amount of the settlement) any Conditional Payments that were unpaid at the time of the settlement, and that the parties must protect Medicare's interest in the future. In the event that CMS finds that its interest in the future was not adequately protected CMS may require the class members/class claimants individually and jointly to pay up to the entire amount of the settlement on Medicare-covered expenses related to the injuries before Medicare will cover or pay benefits to any claimant for the injury. Class members/claimants voluntarily accept the risk that Medicare may take such action and, in that event, waive (each and all of them) any and all claims of any nature and/or damages against the Compromising Defendants including but not limited to the 'Private Right of Action' under the MSP, 42 USC Sec. 1395(b)(3)(A).

4. Coordination of Conditional Payment research

In order to facilitate and coordinate the Conditional Payment research, the Special Master shall send CMS-approved research forms to each class member/claimants upon receipt of their proof of claim. In particular, defendant will provide the Special Master with a CMS Section 111 Compliance Form, as well as an

Authorization giving the Special Master, PSC, Compromising Defendants, and/or Counsel for Compromising Defendants authority to engage in Conditional Payment negotiation and to otherwise correspond with CMS and/or the MSPRC regarding individual class members/claimants. The CMS Section 111 Compliance Form is attached to this Agreement as Exhibit "A". The Authorization directed to CMS is attached to this Agreement as Exhibit "B". Once the signed form is received, the Special Master will send a copy of the form to Compromising Defendants and Class Counsel. Class Counsel and/or the Special Master will then use the information provided by the class member/claimant to determine the beneficiary status of each class member/claimant by conducting Conditional Payment Research, including but not limited to an index search and a query with CMS and SSDI indices. Class Counsel and/or the Special Master will copy Compromising Defendants on this research, including the provision of essential data points received in the research. The Special Master will not make any payments in connection with a claim prior to receiving confirmation from CMS that the class member/claimant is not a Medicare beneficiary. If the class member/claimant is a beneficiary, once the claim has been reported, the Special Master will undertake the required Conditional Payment research for any class members/claimants

that fall within the criteria outlined within the MSP and applicable regulations. For each class member/claimant who is Medicare eligible (e.g. ≥ 62.5 years old or receiving SSDI benefits) but whose beneficiary status is unconfirmed, the Special Master will either obtain a Conditional Payment letter or Zero Interest letter. Where Conditional Payments are owed by a class member/claimant, the individual class member/claimant will have the option to seek a waiver or reduction of the amounts owed to Medicare or instruct the Special Master to pay Medicare's Final Demand less any Procurement Costs pursuant to 42 C.F.R. 411.37. The Special Master will provide to each class member/claimant, with a copy to the Compromising Defendants and Class Counsel, any correspondence it receives from CMS and/or the MSPRC in connection with said Conditional Payment research or claims satisfaction letters.

5. Class Counsel and class members/claimants accept the risk that MSPRC, CMS, or other governmental agencies may assert additional liens in the future

Class Counsel and class members/claimants knowingly accept the risk that the MSPRC, CMS, a collection agency, or any other governmental entity may uncover a claim for future benefits or that Medicare may demand conditional payment for future benefits in the years to come. Specifically, Class Counsel and class

members/claimants understand that, should CMS find that this settlement did not adequately protect Medicare's interests, CMS may demand payment of covered expenses related to the treatment of any class member's/claimant's injuries before Medicare will provide coverage for the injury. Accordingly, Class Counsel and class members/claimants agree to hold harmless and indemnify Compromising Defendants for reimbursement of defense costs and attorneys' fees in connection with any pre-settlement Medicare conditional payments that a collection agency, CMS, the MSPRC, or any other governmental entity may now demand or require, or may discover and demand in the future, in addition to reimbursement of any said conditional payments that a collection agency, CMS, the MSPRC, or any other governmental entity may demand or require Compromising Defendants to pay.

IV. ALLOCATION AND DISTRIBUTION

- A.** The Court shall administer the benefits provided by this Settlement Agreement, through the services of the **Special Master** as outlined below, and shall handle and resolve issues involving Class membership, proof of claim, allocation and distribution of funds/benefits, and all other issues presented, in a rational, equitable, practical, responsive, cost-effective, efficient and, where justified, expansive and inclusive manner.
- B. Special Master:** 1) The Parties agree that the Court will appoint a Special Master. The process of selection of the Special Master shall be as ordered by the

Court. Subject to the approval of the Court, the Special Master shall have authority to contract with others or to appoint such agents as may be necessary to carry out his/her responsibilities as Special Master. The Special Master shall carry out such responsibilities in as economical and effective a manner as possible, and shall consult with and report to the Court, Class Counsel, and Counsel for the Compromising Defendants on a regular basis. The duties of the Special Master shall include, but are not limited to, the following: a) establish conduct and manage the Claims Administration process and, if necessary, to hire and compensate his/her own employees or agents to accomplish same; b) create proof of claim forms; c) formulate fair, equitable and reasonable criteria and procedures for the claims process and for allocation and distribution of Settlement Fund Payments to the Class Members; d) distribute payments from the Settlement Fund in accordance with the criteria established; e) recommend to the Court the necessary reserves from the Settlement Fund to effectuate adequate and reasonable management of the allocation and distribution process, including reserves for fees and costs; f) submit to the Court regular reports on the foregoing, along with recommendations for the Court's consideration in proceeding with the allocation and distribution process following the Final Settlement Date; g) otherwise assist the Court and the Parties as necessary and in accordance with this Agreement. 2) Special Master shall certify to the Court and to all Parties that in implementing this Settlement Agreement, the Special Master has fully complied with all requirements and regulations of the Medicare Secondary Payer Act. 3) The Special Master shall have the power to implement reasonable procedures

designed to protect against and prevent payment of fraudulent claims, to assure an acceptable level of reliability and quality control in the processing of claims, and to do such other things as are necessary to promote fair, full, and final administration of Claims and the distribution of settlement proceeds. 4) Class Counsel and Counsel for Compromising Defendants shall be entitled to inspect any and all records of the Special Master, including correspondence, emails, accounting records, bank records, spreadsheets at any time, upon reasonable notice.

- C. Escrow Agent:** The Parties agree that The Whitney Bank of New Orleans will serve as the Escrow Agent, as ordered by the Court, in accordance with the terms of the Escrow Agreement, substantially in the form set forth in Exhibit _____, attached hereto and hold the Settlement payments, and when payment thereof becomes due under the terms of this Agreement, will segregate, deposit, and administer the settlement proceeds pursuant to the Escrow Agreement, this Settlement Agreement, and such other Orders as the Court may issue.
- D. Bar Order:** The Parties agree to seek as part of the Settlement administration in conjunction with the allocation and distribution process, or at such other time as the Court deems appropriate, an order from the Court establishing a process and time limit, for any and all Persons, medical providers, healthcare providers, doctors, employers, insurers, Medicaid, Medicare, the Social Security Administration, Louisiana Department of Health and Hospitals, governmental entities, workers' compensation carriers, health departments, attorneys, and other Persons, without limitation, to assert any type of claims, demand or liens against

the Settlement Funds or the Parties related to the Incident, the Claims, the Litigation or the Settlement and to include in the judgment to the fullest extent of any applicable law, a release of, and a bar order enjoining any and all Persons, without limitation, from bringing, any and all claims of any sort (whether for reimbursement, indemnity subrogation, liens, claims, fees, expenses or for any other claim, lien or recovery) against the Parties or the Settlement Funds that arise from, concern, or are related, directly or indirectly, to the Incident, the alleged injuries, the Claims, the Litigation or the Settlement. The Court, through the Special Master will be requested to, in the administration of the Settlement (consistent with due process, fundamental fairness, and the goal of resolving all matters related to the Incident), finally conclude, through termination or satisfaction, all obligations of the Parties as to any and claims or liens, if any, against the Settlement Funds or any Class Member's recovery.

V. SUBMISSION AND PAYMENT OF CLAIMS

- A. Upon final approval of the Settlement, and following the Effective Date, Class Members who have submitted proofs of claim that satisfy objective criteria established by the Special Master, including appropriate proof of class membership, and meet the deadline established by the Court for filing such claims, will receive benefits from the Settlement Fund in accordance with procedures to be established by the Special Master. Benefits shall be determined for each such Class Member by the Special Master based upon appropriate and reasonable criteria to be determined by the Special Master.

B. The Class Members filing proof of claim shall each warrant that they are duly authorized to make their respective claims and that they are the proper parties to receive the Settlement Proceeds distributed pursuant to this Settlement. The Class Members further shall warrant that they will not execute on any judgment to the extent that it is entered against, or would require or result in payment by, any of the Released Parties to any person for damages resulting from the aforesaid alleged injuries and damages arising out of the Released Claims or the Causes of Action. In the event that a Class Member does not comply with all of the requirements for submitting a timely and fully completed Claim Form as prescribed by the Special Master, then such Class Member shall not be eligible to receive any allocation or payment from the Settlement Fund. The claims of Class Members who do not file timely Claim Forms with all appropriate documentation as required by the Special Master are forever barred as specified in the Final Order and Judgment and will not be entitled to participate in the Settlement although they will remain bound by the terms of the Settlement.

C. It is the intent of this Settlement Agreement, and the Court shall so order the Special Master, that all Settlement Funds shall be distributed to Class Members, subject to the deduction of such amounts approved by the Court for attorney's fees, expenses, administrative costs, compensation for the Special Master, Escrow Agent, Court Appointed Distribution Agent, and/or their agents or employees.

VI. REPRESENTATIONS AND WARRANTIES

A. The Class Counsel on behalf of the Class represent and warrant that they explained and will continue to explain this Agreement and other matters related to

the Settlement to the Class Representatives, and the Class Representatives have been and will continue to be properly informed of the nature of the Released Claims and the terms of the Settlement.

- B. Each named Class Representative and Trial Plaintiff acknowledges that he or she has been represented by counsel of his or her own choosing in connection with the Litigation and the negotiation and execution of this Settlement Agreement and that he or she has had a reasonable and sufficient opportunity to consult with counsel to the extent that he or she desires before executing this Settlement Agreement.
- C. Each named Class Representative and/or Trial Plaintiff acknowledges that he or she consents to the terms of this Settlement Agreement and that he or she considers the terms of this Settlement Agreement to be adequate, fair and reasonable.
- D. Compromising Defendants represent and warrant that they will satisfy their obligations under this Agreement, and further, that their employees and/or counsel will in good faith take all such steps and actions that are reasonably required to fund the Settlement.

VII. PROPOSED ORDERS

- A. The Class Counsel and Compromising Defendants' counsel shall promptly submit this Agreement to the Court and jointly request an Order a) granting Preliminary Approval of the Settlement; b) establishing and approving dissemination of Notice to Class Members; and c) appointing the Special Master, describing the duties and obligations of same, and providing for compensation of same.

B. The Class and Compromising Defendants shall also request the Court to:

1. Issue an order or orders setting forth scheduling and procedures for the implementation of the terms and conditions of this Agreement;
2. Issue an order enjoining the assertion, after the date of execution of this Agreement, of Released Claims against the Compromising Defendants and staying defense of the Litigation against the Compromising Defendants, in the Court and the Appellate Courts (Moreover, the Class and Compromising Defendants agree to file pleadings as may be needed to stay related appeals and proceedings, if any);
3. Set forth procedures and deadlines associated with, and express its approval of, the notice, settlement procedure, and the Fairness Hearing;
4. Appoint a CADA relative to this Settlement.
5. When appropriate, establish a procedure and a time limit for any Person, including but not limited to Persons, medical healthcare providers, employers, insurers, Parties, Medicaid, Medicare, the Social Security Administration, Louisiana Department of Health and Hospitals, governmental entities, workers' compensation carriers, attorneys and/or other persons to assert Claims against the Settlement funds, and including in the Order and Judgment a release of, and a bar order enjoining any and all Persons from bringing, any and all Claims of any sort whether for reimbursement, indemnity, subrogation, liens,

claims, fees, expenses or for any other claim, lien or recovery against the Parties, their attorneys, or the Settlement Funds that arise from, concern, or are related, directly or indirectly to the Incident, the alleged injuries, or the Litigation. Failure to meet the Court ordered procedure and bar date shall result in waiver of any such claims.

6. Establish an objection procedure pursuant to Code of Civil Procedure article 594.

C. In conjunction with the Fairness Hearing, the Class through Class Counsel and Compromising Defendants shall jointly request that the Court enter an Order and Judgment pursuant to Louisiana Code of Civil Procedure article 594, finally approving the Agreement.

D. As part of the Order and Judgment, the Class Counsel on behalf of the Class, and Compromising Defendants, through counsel, shall jointly submit to the Court a proposed order dismissing with prejudice the Claims of the Class in the litigation against the Compromising Defendants consistent with this Agreement.

VIII. STAY OF LITIGATION: Pending the Final Settlement Date, the Class and Compromising Defendants will jointly move for a stay of the Litigation between the Class and Compromising Defendants in the Court, Appellate Courts and any other proceedings. Such motion shall be made in or contemporaneously with the motion for the Preliminary Approval Order.

IX. COUNSEL AND OTHER PROFESSIONAL AND ADMINISTRATIVE FEES

- A. Class Counsel have made no agreement among themselves, nor any agreement with Compromising Defendants, regarding the amount of Class Counsel fees or Litigation expenses to be recovered.
- B. Neither the Class, any Member of the Class, any Class Counsel, nor other attorneys who have represented the Class/Members of the Class, shall have any Claim whatsoever against Compromising Defendants for payment of attorneys' fees, administrative expenses, compensation of the CADA or Special Master, or their agents or employees. All Class Counsels' fees and expenses, administrative expenses (including all costs of Notice provided in III(B)(3) above) , compensation of the CADA and Special Master, and their agents or employees, shall be paid from Settlement Funds subject to Court approval.

X. INDEMNITY

- A. Class Members hereby warrant that they are the sole parties entitled to assert claims for damages arising out of, or directly or indirectly resulting from the Claims, Released Claims and/or Incident as defined herein.
- B. Each Class Member does hereby bind and obligate themselves, their successions and/or estates, and any of their heirs, beneficiaries, guardians, assignees, agents and/or subrogees to protect, hold harmless, and indemnify Compromising Defendants, from and against any and all past, present or future actions, liabilities, liens, claims, demands, lawsuits, causes of action, rights of action, or judgments of any kind whatsoever arising out of or whatsoever related directly or indirectly to his or her Released Claim, including without limitation, any and all claims

asserted or that could have been asserted in this Litigation, any of the facts or circumstances underlying this Litigation, related to or arising from any claims related to or arising out of the alleged Incident. This indemnity obligation expressly includes, without limitation, any and all claims, demands, suits, causes of action, rights of action, liabilities, liens or judgments of any kind for 1) attorneys' fees, legal fees, costs and/or expenses, and 2) medical fees, costs, liens, reimbursements and/or expenses.

- C. Class Members warrant that they will not file or participate in any suit, demand, claim, action, lien, proceeding or cause of action against the Compromising Defendants and shall not execute on any future judgment entered against any of the Compromising Defendants for damages arising out of, or directly or indirectly resulting from the Released Claims.

XI. MISCELLANEOUS PROVISIONS

A. Headings for Convenience Only

The headings of each section and paragraph of this Agreement are included for convenience only and shall not be deemed to constitute part of this Agreement or to affect its construction.

B. Applicable Law

The law of the state of Louisiana shall apply to all issues of the interpretation, application or enforcement of this Agreement.

C. Authority of Signatories

The signatory to this Agreement on behalf of Compromising Defendants warrants that he/she is authorized and empowered to execute this

Agreement on behalf of and to bind Compromising Defendants. Each of the signatories on behalf of the Class warrants that he/she is the person identified in the order(s) appointing Class Counsel and is authorized to execute this Agreement.

D. Binding Effect

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective estates, heirs, successors and assigns.

E. No Party Deemed the Drafter

This Agreement has been negotiated at arm's length, with the active and full participation of Class Counsel and Compromising Defendants counsel. In the event of any dispute arising out of this Agreement, or in any proceeding to enforce any of the terms of this Agreement, neither the Class nor Compromising Defendants shall be deemed to be the drafter of this Agreement or of any particular provision or provisions, and no part of this Agreement shall be construed against any Party on the basis of that Party's identity as the drafter of any part of this Agreement.

F. Entire Agreement.

The Parties represent, warrant and agree that with respect to this Settlement no promise or agreement not expressed herein has been made to them, and that this Agreement contains the entire agreement between the Parties, and that this Agreement supersedes any and all prior agreements or understandings, between the Parties with respect to the matters herein, and that the terms of this Agreement are contractual and

not a mere recital; that in executing this Agreement, no Party is relying on any statement or representation made by another Party or any agents or attorneys of any Party concerning the subject matter, basis or effect of this Agreement other than as set forth herein; and that in executing this Agreement, the Parties rely solely on their own judgment and knowledge. No prior draft of this Agreement, nor any negotiations or proceedings in pursuance of this Agreement, nor any other parole evidence, shall be offered or received as evidence concerning the interpretation or construction of this Agreement.

G. Amendments

This Agreement shall not be altered, amended or modified except by written instrument executed by all Parties. The Parties reserve the right to grant any reasonable extensions of time that might be necessary or desirable in carrying out any of the provisions of this Agreement, if all Parties so agree in writing.

H. Inadmissibility

The Parties specifically acknowledge, agree and admit that this Agreement and its exhibits, along with all related drafts, motions, pleadings, conversations, negotiations and correspondence, shall be considered a compromise within the meaning of the Louisiana Code of Evidence article 408 and any equivalent rule of evidence of any state, and shall not constitute, be construed, be offered, or received into evidence in the Litigation or in any other pending or subsequently filed action. However,

nothing contained in this paragraph shall be interpreted to restrict the right of any Party to introduce evidence required for the approval, enforcement or interpretation of this Agreement.

I. Severability

If any part of this Agreement is determined by the Court, where applicable, or an Appellate Court, where available, to be invalid, or unenforceable, such ruling shall not affect the validity or enforceability of other parts of this Agreement, provided that the amount of the Settlement Funds is approved and the release and dismissal provisions, bar order and non-execution agreement herein are still enforceable.

J. Procedure for Execution

This Agreement may be executed in multiple originals (with or without separate signature pages) and shall become effective on the last date the said originals have been signed by all of the Parties. Due to the importance of time, it is expressly agreed that copies of the executed signature pages may be sent by telefax or email between the Parties and that these telefaxed or emailed signatures, when received, shall be effective as original signatures for any and all purposes. Once executed, multiple originals of the Agreement signed by all Parties shall be delivered thereafter by mail or otherwise to the Parties after the telefaxed or emailed signatures have been received.

K. Continuing and Exclusive Jurisdiction

The Court shall have continuing and exclusive jurisdiction over all matters related to the Settlement and shall be the sole and exclusive forum for activities or disputes between the Parties relating to the Settlement.

L. Mutual Obligations of Assistance

The Class, each Class Member, and Compromising Defendants and their representatives and attorneys, shall have the mutual obligation to assist each other and cooperate in the effectuation of this Agreement in accordance with the terms of this Agreement and all applicable legal requirements. The Class, Compromising Defendants, and their representatives and attorneys, as well as all released persons, shall take all steps necessary or appropriate to obtain an order from the Court granting Preliminary Approval and a final Order and Judgment regarding this Agreement and to provide the Settlement Benefits to Class Members.

M. Contact Information

Class Counsel:

Compromising Defendants:

Kurt S. Blankenship, Bar # 3131, Blue Williams, LLP, 3421 N. Causeway Blvd., Suite 900, Metairie, LA 70002 Telephone: (504) 831-4091
Facsimile: (504) 849-3028;

Jeffrey S. Osgood, Bar # 15334500, Strasburger & Price, L.L.P, 901 Main Street, Suite 4400, Dallas, TX 75202 Telephone: (214) 651-4582.

SIGNATURES

TENET HEALTHCARE CORPORATION

BY: _____

Jeffrey S. Osgood, (Bar No. 45334500)

Strasburger & Price, L.L.P.

901 Main Street—Suite 4400

Dallas, TX 75202

Telephone: (214) 651-4582

TENET HEALTH SYSTEM MEMORIAL MEDICAL CENTER

By: _____

Kurt S. Blankenship, (Bar No. 3131)

3421 N. Causeway Boulevard, Suite 900

Metairie, LA 70002-3760

Telephone: (504) 831-4091

CLASS COUNSEL:

By: _____

Joseph M. Bruno (Bar #3604)

Bruno & Bruno, LLP

855 Baronne Street

New Orleans, LA 70113

Date: _____

By: _____

Roderick Alvendia (Bar #25554)

Alvendia, Kelly & Deamrest, LLC

909 Poydras Street, Suite 1625

New Orleans, LA 70112

Date: _____

By: _____

Mark P. Glago (Bar #25395)

The Glago Law Firm

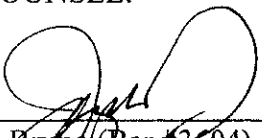
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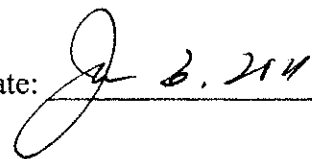
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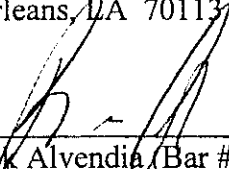
Date: _____

3421 N. Causeway Boulevard, Suite 900
Metairie, LA 70002-3760
Telephone: (504) 831-4091


CLASS COUNSEL:

By: 
Joseph M. Bruno (Bar #3604)
Bruno & Bruno, LLP
855 Baronne Street
New Orleans, LA 70113

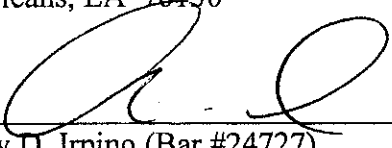
Date:  6.21.11

By: 
Roderick Alvendia (Bar #25554)
Alvendia, Kelly & Deamrest, LLC
909 Poydras Street, Suite 1625
New Orleans, LA 70112

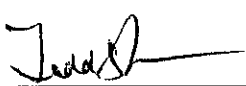
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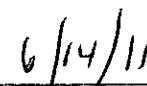
By: 
Mark P. Glago (Bar #25395)
The Glago Law Firm
365 Canal Street, Suite 1700
New Orleans, LA 70130

Date:  6/6/11

By: 
Anthony D. Irpino (Bar #24727)
Irpino Law Firm
365 Canal Street, Suite 2290
New Orleans, LA 70130

Date:  6/10/11

By: 
Todd R. Slack (Bar #24647)
Huber, Slack, Houghtaling, Pandit & Thomas, LLP
1100 Poydras St., Suite 1405
New Orleans, LA 70163

Date:  6/14/11

By: 
James M. Williams (Bar #26141)

Date:  6/20/11

Gauthier, Houghtaling & Williams
3500 N. Hullen Street
Metairie, LA 70002

By: 

Tammie E. Holley (Bar #26659)

Tammie Holley L.L.C.

650 Poydras Street, Suite 1420

New Orleans, LA 70130

Date: 6 June 11